

Message Text

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TO SECSTATE WASHDC 4393

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EO 11652: GDS

TAGS: SHUM, PINT, PORC, CI

SUBJ: CHILEAN DISAPPEARED: SUPREME COURT WALKS NARROW LINE

REF: A) SANTIAGO 2655 B) SANTIAGO 1972

1. SUMMARY: IN RECENT DECISIONS, THE CHILEAN SUPREME COURT RELIED UPON THE SEPARATION OF POWERS DOCTRINE TO REJECT REQUESTS CONTAINED IN A PETITION SUBMITTED BY THE RELATIVES OF 501 MISSING PERSONS (PARA 6 REF A). IT ALSO SENT THE CARLOS CONTRERAS CASE (IBID) BACK TO THE APPEALS COURT, INSTRUCTING IT TO ASK EACH ARMED SERVICE IN TURN TO PRODUCE HIM, THUS KEEPING THE CASE OPEN AND PRODDING THE EXECUTIVE. CHILEAN LAWYERS THINK THE JUDICIARY IS BEGINNING TO BESTIR ITSELF. END SUMMARY

2. ON APRIL 7 THE SUPREME COURT UNANIMOUSLY RULED IT COULD NOT COMPLY WITH REQUESTS FROM RELATIVES TO "BRING TO THE ATTENTION OF THE SUPREME GOVERNMENT THE ARREST, BY SECURITY FORCES, AND SUBSEQUENT DISAPPEARANCE OF NUMEROUS PERSONS WHOSE WHEREABOUTS REMAIN UNKNOWN" NOR WOULD IT ASK THE GOVERNMENT TO MAKE PUBLIC THE RESULTS OF THE INVESTIGATIONS INTO VARIOUS DISAPPEARANCES IT HAD PROMISED TO UNDERTAKE. THESE WERE TWO OF THE THREE SPECIFIC ACTIONS PETITIONED FOR. ON THE RELATIVES' FINAL REQUEST, ON JUDGE (RAFAEL RETAMAL) DISSENTED FROM THE DECISION OF THE LIMITED OFFICIAL USE

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COURT NOT EVEN TO TRANSMIT THE PETITION AND ASSOCIATED DOCUMENTS TO THE GOVERNMENT.

3. IN ITS RULING THE COURT ACCEPTED THE PETITIONERS' CONTENTION THAT UNDER THE 1925 CONSTITUTION IT HAD RESERVED POWERS TO RECEIVE PETITIONS ON ANY SUBJECT. BUT IT HAS NO GENERAL OVERSIGHT POWERS REGARDING THE EXECUTIVE OR OTHER GOVERNMENTAL ORGANS.

RATHER THESE RESERVED POWERS ARE LIMITED TO ENSURING THAT DUE PROCESS HAS BEEN FOLLOWED IN SPECIFIC CASES. SINCE NO LAW SPECIFICALLY EMPOWERED THE COURT TO DO WHAT THE PETITIONERS HAD ASKED, THEIR REQUEST WAS UNFOUNDED. STRIKING A DEFENSIVE NOTE, THE COURT REMONSTRATED THAT THE JUDICIARY HAD VIGOROUSLY PURSUED INDIVIDUAL CASES OF MISSING PERSONS.

4. ALSO ON APRIL 7, THE SUPREME COURT RESOLVED TO REMAND TO THE APPEALS COURT THE CASE OF CARLOS CONTRERAS. THE LOWER COURT HAD ASKED

THE SUPREME COURT TO INSTRUCT THE GOVERNMENT TO PRODUCE CONTRERAS. (IN NOVEMBER 1976 CONTRERAS WAS TAKEN AWAY BY MEN IDENTIFYING THEMSELVES AS DINA AGENTS IN A VEHICLE WITH LICENSE PLATES TRACED TO THE CHILEAN AIR FORCE). THE SUPREME COURT HELD THAT THE APPEALS COURT SHOULD SPECIFICALLY REQUEST THE AIR FORCE AND, IF THAT PROVED FRUITLESS, THE OTHER SECURITY SERVICES, TO PRODUCE CONTRERAS. ONLY AFTER IT HAD EXHAUSTED THESE SOURCES SHOULD IT COME BACK TO THE SUPREME COURT.

5. CONTRASTING MEDIA PLAY INDICATES HOW THE GOC FELT ABOUT THE DECISIONS. GOC-OWNED "EL CRONISTA" RAN THE DECISION ON THE PETITION UNDER A HEADLINE READING: "SUPREME COURT SAYS "ENOUGH" TO THE SHOW OF THE DISAPPEARED." THE ONLY MENTION OF THE CONTRERAS RULING APPEARED IN A BRIEF ITEM IN "EL MERCURIO" AND AN EVEN BRIEFER ONE IN "ULTIMAS NOTICIAS" -- A WEEK AFTER THE RULING.

6. COMMENT: THE EMBASSY FOUND THE PETITION PROVOCATIVELY WORDED AND, IN FACT, IT SEEMED TO AIM MORE FOR PUBLICITY THAN FOR COURT ACTION (REF B). CLEARLY THE COURT WOULD NOT TELL THE GOC THAT IT LIMITED OFFICIAL USE

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BELIEVED THE LATTER HAD DONE AWAY WITH THE 501. ON THE OTHER HAND, THE RIGHT OF PETITION, ALSO RETAINED IN THE NEW CONSTITUTIONAL ACTS, IS NOT LIKELY TO HAVE MUCH MEANING IF THE COURTS REFUSE EVEN TO PASS SUCH DOCUMENTS ON TO THE OTHER BRANCHES OF GOVERNMENT.

7. THE CONTRERAS RULING, ON THE OTHER HAND, EMBARRASSES THE GOVERNMENT. NOW EACH OF THE SERVICES MUST RESPOND TO THE APPEALS COURT AND ONCE THAT PROCESS IS COMPLETED, THE SUPREME COURT WILL AGAIN HAVE TO DECIDE WHETHER OR NOT TO GO TO THE COMMANDER-IN-CHIEF AND WIELDER OF THE EXECUTIVE POWER, PRESIDENT PINOCHET HIMSELF.

8. SINCE LATE 1976 WE HAVE BEEN REPORTING JUDICIAL RELINGS REFLECTING A MORE VIGOROUS POSITION ON HUMAN RIGHTS. BUT WE HAVE BEEN RELUCTANT TO SAY THEY REVEAL A PERMANENT AND FUNDAMENTAL SHIFT IN JUDICIAL THINKING. KNOWLEDGEABLE CHILEANS, NOW THINK THAT SUCH A CHANGE MAY BE OCCURRING. AN OUTSTANDING CRIMINAL LAWYER AND PROFESSOR, WELL CONNECTED IN JUDICIAL CIRCLES AND HERETOFORE CRITICAL OF THE COURTS' ABDICATION ON HUMAN RIGHTS, PROVIDES A CASE IN POINT. HE TELLS US THAT A MARKED SHIFT HAS

OCCURRED AND THAT THE JUDGES WILLCONTINUE ALONG THE NEW AND
SOMEWHAT MORE ASSERTIVE COURSE.
POPPER

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